

WETLANDS COUNCIL

MINUTES

September 11, 2007

The Wetlands Council met on Tuesday, September 11, 2007 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Lawrence E. Morse, John S. Cobb, Dennis Danna, Paul W. Goodwin, Dennis Lydon, Seth Prescott, Jack Ruderman, and David Thompson

Absentees: Sharon Champagne, Thomas Chrisenton , Camilla Lockwood, and Thomas Sloan

The meeting was called to order by Chairman Larry Morse at 9:08 a.m. with a quorum present.

Chairman Morse welcomed the new member to the council, Dennis Lydon, representing the construction industry.

1. Approval of Minutes of August 14, 2007 Council Meeting

A motion was made by Councilor Thompson and seconded by Councilor Cobb to accept the minutes of August 14, 2007. It was unanimously voted.

At 9:11 the meeting was recessed for the Council to have a Client/Attorney session with Council Attorney, Anthony Blenkinsop.

At 9:40 the meeting was called back into session.

Chairman Morse had asked DES Attorney, Gretchen Hamel, to give an update on the vacant Clerk position. Internal applicants will be interviewed first and then if no one is hired the position will be advertised outside the Department. Attorney Hamel had prepared a pre-hearing conference data sheet for up-coming conferences so the correct information is collected. There are two pre-hearing conferences scheduled for the September 24th. The Town of Barrington Appeal is scheduled for public hearing on September 25th. Attorney Blenkinsop will be in attendance for the pre-conference hearings on September 24th. He mentioned that if filings or pleadings are distributed during conferences they should be given to Gretchen so they are in the appropriate appeals files. Mary Ann Tilton mentioned that there are standard sign-in sheets and emergency exit announcements for the pre-hearing conferences. The Attorney General's office has a hearing manual from the training that they have done for councils and boards across the state. A packet will be prepared for all hearing officers.

At 9:50 the meeting was recessed for Council to continue their Client/Attorney session.

At 10:25 the meeting was called back into session.

2. Status of Appeals

Cases Awaiting Council Action

- Docket No. 06-12 WtC – Bodanza et al.: WB #2002-02483
Councilor Goodwin recused himself at this time.

A motion was made by Councilor Cobb and seconded by Councilor Ruderman to deny the Motion for Reconsideration. Motion was voted unanimously.

Councilor Goodwin rejoins the meeting

- Docket No. 07-14 WtC – Courtney Galluzzo: WB#2007-00291
The appeal was timely filed.

A motion was made by Councilor Goodwin and seconded by Councilor Thompson to accept this Appeal and the motion carried with one abstention.

Chairman Morse will be the Hearing Officer.

- Docket No. 07-15 WtC – Charles W. Kalil: WB#2006-02611
The appeal was timely filed.

A motion was made by Councilor Goodwin and seconded by Councilor Thompson to Summarily Dismiss this Appeal based on Council's past action, based on fact in Council's opinion the facts of the case have not changed since the last action and we will support our last action and dismiss the case. The motion carried with one abstention.

- Docket No. 07-16 WtC – Springfield Point Nirvana LLC: WB#2006-02637
Councilor Goodwin recused himself at this time. The appeal was timely filed.

A motion was made by Councilor Thompson and seconded by Councilor Cobb to accept this Appeal and the motion carried unanimously.

Councilor Goodwin rejoins the meeting

Hearings or PHCs Scheduled

- Docket No. 07-02 WtC – Town of Barrington: WB#2004-02817
Hearing is scheduled for September 25, 2007 at 10 AM.
No action was needed or taken by the Council.
- Docket No. 07-09 WtC – Derry Conservation Commission: WB#2006-00773
A Pre-Hearing Conference was held September 10, 2007 at 9 AM. A hearing will be scheduled in October.
No action was needed or taken by the Council.
- Docket No. 07-10 WtC – Renate Ranniger: WB#2004-01185
A Pre-Hearing Conference is scheduled for September 24, 2007 at 9 AM.

John Cobb is the Hearing Officer.

- Docket No. 07-13 WtC – Thomas and Kellie Greer: WB#2006-00460
A Pre-Hearing Conference is scheduled for September 24, 2007 at 10:30 AM.
Larry Morse is the Hearing Officer.

No Action Required – Previously Pending Cases

- Docket No. 07-06 WtC – Patricia Woolson: WB#2006-02796
On July 30, 2007 the Pre-Hearing Conference convened with Paul Goodwin as Officer and parties request that proceedings be stayed for 90 days pending settlement discussions. If discussion is not fruitful, the parties will request a new Pre-Hearing Officer to be scheduled. A Motion to Supplement the Record was received from the Appellant which was to be filed before the Pre-Hearing conference, which it was not. It was decided to Defer the action to Supplement the Record to the Hearing Officer, Paul Goodwin. Attorney Hamel's office to send a note to that effect.
No action was needed or taken by the Council.
- Docket No. 07-12 WtC – David Potter: WB#2005-02913
Councilor Goodwin recused himself at this time as the Potters are his clients.
Appeal was Tabled on July 11, 2007.

Councilor Thompson made a motion to take this Appeal off the table seconded by Councilor Lydon and the motion carried unanimously

A motion was made by Councilor Cobb and seconded by Councilor Prescott to accept this Appeal and the motion carried unanimously.

Chairman Morse will be the Hearing Officer.

Councilor Goodwin rejoins the meeting.

Two other Appeals are on the notice but were not filed in sufficient time to take action at this time. Another Appeal has also been filed and will be before the Council in October.

3. Wetlands Bureau Update

Collis Adams, Administrator

- 1) The Shoreline Protection Act requires the Department to establish a permitting process similar to the wetlands permitting process for shoreline structures. A work group has been convened to start drafting the administrative rules to implement the statute changes. Rules need to be in place by April 1, 2008. Staff will also receive training for requirements.
- 2) A stream rules work group has been convened with their next meeting October 1. They will be working on rules relative to streams and rivers
- 3) September 11th the bureau will begin drafting rules relative to amending permits. There are no rules or statutes in regards to amendments. With amendments there is no fee and no statutory time frames. A decision is needed as to what constitutes an amendment, when does it become a whole new application, should a fee be associated with it, and how does it fall into the queue so there is fairness to the whole process.

- 4) Current wetlands applications are being updated and revised so they are more understandable. The Council agreed they would like to look at the draft application changes at the next meeting.
- 5) The LBA Audit and the responses are out. Work is being done on making the changes and when it is finished the Council will receive a briefing on how it was addressed and the steps taken to correct the deficiencies that were brought forth in the audit.
- 6) Work continues with the National Heritage process. The numbers of applications are being monitored and we are still working closely with Fish and Game and the Nat'l Heritage Bureau to further refine/restrict the buffers and narrow the number of applications that need to go through this process. Mary Ann Tilton noted all standards are being addressed. Work is being done to lower the number of false positives. The Commissioner is committed to updating the MOA between Fish & Game and DRED on information sharing within the wetlands application process.
- 7) "*The New Hampshire Method for Comparative Evaluation of Wetlands in NH*" is a document prepared 10 – 12 years ago. \$22,000 has been secured in grant money through NH Coop Extension to revisit the document. Work will be done to make it more useable and technically sound for the public and the department.
- 8) The In-Lieu Fee program has collected about \$500,000 in four different watersheds through the alternative mitigation process. Next step is to issue Requests for Proposals to access the monies to do significant watershed improvement programs. Chairman Morse noted the Council has a charge to be the final decision as to the spending of this money.
- 9) Work is being done with the EPA to develop a wetland monitoring assessment strategy that would rank wetlands - assess their values and functions and rank importance. This will be to protect and preserve and regulate development. This is in the initial stages of first identifying all the wetlands and then categorizing.
- 10) The Commissioner is getting an initiative off the ground to kick off the "Wetlands Program Improvement Initiative". This will look at the over all wetlands program, its operation, and then to hold public meetings throughout the state for public input on what is working and what isn't. If something isn't working, what improvements can be made? The goal is to develop 10 initiatives that look at various specific functions of the bureau to focus on for comments and suggestions in these areas. The Commissioner would like the Wetlands Council to support this for positive changes. Chairman Morse noted that at the September 25th meeting this will be a point of discussion.

4. Discussion of Fetch Rules

Collis Adams shared that the bureau develops rules based on good engineering and sound science as much as possible. The goal is to now have a fetch rule based on science and engineering. The Corp of Engineers methodology for determining a design fetch is based upon an array of wind directions and comes up with an average fetch over a 30 degree arc that can be used as a design fetch. These draft rules are designed for others to understand this and the information that is being looked at for docking structures. Sound science and good engineering form the basis so that the bureau's decisions are defensible and appeals can be looked at clearly and concisely. Exceptions and alternatives can be demonstrated by the applicants so that a permanent dock can be built. This is an attempt to balance public trust, individual rights and the environment. Darlene Forst reviewed the current science of how fetch is proposed and applied.

Councilor Prescott made a motion to accept the rules with a second by Councilor Ruderman. Motion passed with a majority in favor and one opposed.

5. **Discussion of upcoming information sessions regarding vernal pools and stream crossings.**

The Council is hosting informational public meetings to provide an opportunity to the general public to receive information as to the process, why the process is going on, and an opportunity to express their opinions in conjunction with the rule making process. There will be a public hearing on the vernal pool rules. Councilor Chrisenton has set up one in Lancaster on September 25th, Plymouth on the 26th and at Fox Forest on the 27th. A notice with the agenda will be published prior to the meeting. Chairman Morse encouraged representation by the Council members. As this is a joint effort with the Wetlands Bureau, they will have staff there also.

The public notices will be emailed to the Council members also.

6. **Old Business**

7. **Other Business**

8. **Next Meeting** – The next meeting will be September 25, 2007 with a hearing.

9. **Adjournment** -

A motion was made by Councilor Cobb and seconded by Councilor Goodwin to adjourn and was unanimously voted.

The meeting was adjourned at 12:20 PM.